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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Treatment of Operator Services)	CC Docket No. 93-124
Under Price Cap Regulation)	
)	
Revisions to Price Cap Rules for AT&T)	CC Docket No. 93-197

REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments on the Commission's Second Further Notice in the above captioned rulemaking proceeding.^{1/}

The comments filed in this proceeding show a stark difference of opinion. Incumbent local exchange carriers ("LECs") urge the Commission to deregulate them now so they can "compete" more effectively with new entrants in the changing telecommunications market. The emerging LEC competitors, most large telecommunications users and the long distance carriers, on the other hand, urge the Commission to freeze consideration of LEC deregulation until demonstrable, sustainable facilities-based competition is achieved. Since the Commission genuinely wants to promote local exchange competition, the public policy question thus becomes can competition survive if the LECs are deregulated now in the manner advocated by the LECs.

^{1/} See Price Cap Performance Review for Local Exchange Carriers, Treatment of Operator Services Under Price Cap Regulation, Revisions to Price Cap Rules for AT&T, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice of Proposed Rulemaking in CC Docket No. 93-197 (released September 20, 1995) ("Second Further Notice")

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Examination of the comments filed in this docket lead to only one conclusion: "No." Virtually all non-LEC commenters agree that adoption of LEC deregulation now will destroy the potential for facilities-based competition. It is equally clear that LEC arguments in favor of deregulation are disingenuous and misleading. Based on the record in this proceeding it would be arbitrary and capricious for the Commission to give the LECs regulatory flexibility beyond that which they already enjoy at such a critical moment in the development of local exchange competition. The Commission will far better serve the cause of competition by jealously pursuing fair interconnection and number portability policies that lay the groundwork for a future competitive telecommunications market.

I. LEC ARGUMENTS SUPPORTING QUICK DEREGULATION ARE MISLEADING AND SHOULD BE REJECTED.

Not surprisingly, all of the LECs support quick deregulation. Several of the LECs, most notably those facing the greatest near term potential competition, pay lip-service to the concept that deregulation should be tied to increased competition^{2/}. The LEC definitions of "competition," however, must be rejected because they ignore the impact of current LEC monopolies on the opening of LEC markets to competition.

Some LECs, notably the Southern New England Telephone Company ("SNET"), actually claim that the local exchange market is already competitive. SNET argues that because five companies have been certificated to provide local exchange service in Connecticut, and because one of those five companies is affiliated with companies that provide cable television service to

^{2/} See, e.g., Comments of NYNEX at 4 ("The model should provide increasing pricing flexibility as a LEC opens its markets to more competition and as the competitive local exchange carriers develop a competitive presence in a particular market.").

fifty percent of the state, the Connecticut local exchange market is competitive.^{3/} SNET offers no sound reason to conclude that the certification of potential competitors is an appropriate surrogate for actual competition.

SNET claims it wants only to be able to "compete on the same basis as its competitors."^{4/} SNET fails to acknowledge, however, that certification to provide service is one matter, while actually providing service under economic interconnection terms with number portability and access to unbundled monopoly facilities is entirely another. Cox is not aware that SNET is offering true number portability or reasonable interconnection terms to competitors, or that SNET has unbundled facilities on its ubiquitous network so that can all competitors can "compete on the same basis." Connecticut has enacted legislation to encourage local exchange competition, but mere certification does not mean that regulatory arrangements for reasonable competition have been completed. The transition to competition must be treated sensibly. It is plainly not the time to afford an incumbent monopolist regulatory relief.

Recognizing perhaps that the case cannot be made that there is actual competition, other LECs seek regulatory relief using "potential competition" proposals. Under these proposals, the LECs would be deregulated once the potential for competition is realized as measured by various competition proxies. While none of the "potential competition" proposals in the Second Further Notice are viable, the LEC have gone one step further and boldly altered the Commission's proposals in a manner designed to preserve their monopoly power. For example, addressability, one competition proxy, was defined by the Commission in the Second Further

^{3/} Comments of SNET at 4-7.

^{4/} Id. at 7.

Notice as "a competitor's ability to utilize existing capacity in response to a price increase."^{5/}

The LECs, however, in presenting their own formulation of the addressability proxy, have fundamentally altered the Commission's proposal by including potential capacity. Consequently, under the LEC proposal, a market would be competitive if a facilities-based carrier could theoretically serve a certain percentage of the market by extending its facilities.^{6/}

Such a measure of marketplace competition is a LEC monopolist's dream. Companies entering the local exchange market do not merely face other competitors; they are confronted by a well-established, firmly entrenched monopolist with a ubiquitous network and continuous revenue stream based on decades of guaranteed profits. Further, the facilities-based local exchange market is a highly capital and regulatory intensive business that companies cannot easily enter and exit. Since competitors cannot easily enter and exit the local exchange market, "addressability" and other "potential competition" proposals are not at all useful in determining when a market is subject to competition. In a capital intensive, monopolistic market, approximating market competitiveness using a method that looks at what percentage of the market a company could serve if it expanded its facilities is entirely inappropriate. Adoption of LEC deregulation based on "addressability" or other measures of potential competition would be a stunning blow to the emergence of competition because it would enable the LECs to preempt potential competitors before they can enter a market.^{7/}

^{5/} Second Further Notice at ¶ 139. As proposed by the Commission, market competitiveness can be measured by how "addressable" a market is.

^{6/} See, e.g., Comments of GTE at 67-70

^{7/} See, e.g., Comments of Cox at 5-9

A traditional, practical and historic method of determining whether a market is competitive is market share. Indeed, market share was a determinative factor in the Commission's recent decision to deregulate AT&T.^{8/} BellSouth, however, states without citing any support that the "Commission has recognized the limitations of market share as a measure of competition."^{9/} GTE also disputes the use of market share as a measurement of competitiveness, claiming that using market share as a deregulation trigger "predetermines the outcome of the competitive process, effectively reserving a portion of the market for a new entrant. . . . [and building a lag into the system] during which entrants will be protected from the incumbent."^{10/} GTE seems to miss the point that the purpose of regulation in this instance is to promote competition. Market share is the historic and most practical method of determining when a formerly monopolistic market is actually competitive, as the Commission observed when it deregulated AT&T.^{11/}

II. SIGNIFICANT, SUSTAINABLE FACILITIES-BASED COMPETITION MUST BE IN PLACE BEFORE ANY LEC DEREGULATION OCCURS.

Many of the LEC proposals, and several of the proposals discussed in the Second Further Notice, call for LEC deregulation even in the absence of local exchange competition. As Cox

^{8/} See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427 (released October 23, 1995).

^{9/} Comments of BellSouth at 53

^{10/} Comments of GTE at 72

^{11/} Actual facilities-based competition will be realized when at least one LEC-competitor can provide switched services throughout a LATA market area and when that competitor is actually providing service to more than a de minimis share of the market. Comments of Cox at 4 n.9

and virtually all of the non-LEC commenters have shown, implementation of a LEC deregulatory program before the establishment of sustainable facilities-based competition would only serve to perpetuate LEC monopolies and doom the potential for competition.

LEC market power is undisputed.^{12/} As Cox discussed in its comments, LEC market share has not decreased significantly over the last twenty years.^{13/} Further, as the NCTA comments vividly illustrate, the LECs are doing everything in their power to hang on to their monopoly status.^{14/} Any relaxation of the current price cap regime can only harm facilities-based competitors, especially now when state prohibitions on local exchange competition are finally starting to lift but the final terms of basic elements of competition, such as interconnection and number portability, are not resolved.

No rational basis has been presented to justify further LEC price cap deregulation in the absence of significant competition. As the Commission observed, "the LEC price cap plan was designed to simulate some of the efficiency incentives found in competitive markets and to act as a transitional regulatory scheme until the advent of actual competition makes price cap regulation unnecessary."^{15/} While price cap regulation may not be needed when real facilities-based competition emerges in the local exchange and interstate access market, such competition has not yet developed. Nothing in the record shows that the state of actual competition in the local exchange market has changed significantly since LEC price caps were put in place in 1990,

^{12/} Statements such as those of Pacific Bell that the local exchange bottleneck no longer exists are ludicrous and should be flatly rejected. See Comments of Pacific Bell at 36-37.

^{13/} Comments of Cox at 4.

^{14/} Comments of the National Cable Television Association ("NCTA") at 12-18.

^{15/} Second Further Notice at ¶ 9.

and nothing in the record supports the LEC or Commission deregulation proposals in the absence of actual competition.^{16/}

The Second Further Notice states that the Commission's contemplated changes to LEC price cap regulation are designed to benefit consumers.^{17/} The LECs, however, ask the Commission to craft rules that are designed to benefit the LECs. Unless the Commission's implicit intention is to protect the current LEC monopolies, it will reject all LEC deregulation schemes that do not include significant, facilities-based competition based on economic interconnection as a mandatory pre-condition.

Respectfully submitted,

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^{16/} See, e.g., People of State of Cal. v. FCC, 39 F.3d 919, 930 (9th Cir. 1994) (The Commission cannot change its material conclusions without support or explanation.).

^{17/} Second Further Notice at ¶ 1.